



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/831,745

09/20/2001

Marc Birkner

032326-139

7104

21839

7590

11/17/2006

BUCHANAN, INGERSOLL & ROONEY PC
POST OFFICE BOX 1404
ALEXANDRIA, VA 22313-1404

EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 11/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 09/831,745	Applicant(s) BIRKNER ET AL.	
	Examiner Jung Kim	Art Unit 2132	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--


The Appeal Brief filed on 24 October 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☐ Other (including any explanation in support of the above items):

4. On pg. 4 of the appeal brief, applicant identifies means language of claim 1 including: "controlling means includes means for selectively enabling and/or inhibiting state transitions" as comprising "the check engine in combination with the table 11 (page 11, lines 1-15)." However, it is not clear if the check engine in combination with the table corresponds to the controlling means, or to the means for selectively enabling and/or inhibiting state transitions.

6. Applicant's brief does not contain an argument for the rejections of claims 3, 7, 13, 15-19, 21-23 and 36-38. Applicant must either present an argument for the rejections of these claims, or applicant must withdraw these claims and depending claims. In particular, it appears that applicant's argument with respect to the rejections of claims 1 and 12 are inadequate considering that dependent claims 3 and 8 are not addressed. I.e. if the rejections of claims 3 and 8 are not under appeal, then the rejections to these claims are deemed proper, and because claims 3 and 8 include all limitations of claims 1 and 12 respectively, then by extension claims 1 and 12 are not patentable under the rejections of claims 3 and 8.


 GILBERTO BARRON
 SUPERVISORY PATENT EXAMINER
 TECHNOLOGY CENTER 2100

Jung Kim
 AU 2132